



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B. Quality, Research & Innovation, Outreach
The Director

Brussels,
PP/nb/agri.ddg1.b.4(2021)1008784

[Redacted]

Thank you for your e-mail of 22 December 2020 (Int. Ref. ARES (2020)7854975) asking clarifications with respect to the provisions concerning retroactive recognition of conversion period in case of greenhouses and suggesting the Commission to use the empowerment under Article 12 (2) of Regulation (EU) 2018/848 to set specific rules for the production of herbs and ornamentals in pots with reference to vertical production methods. Please accept my apologies for this late reply.

On your first question, I can confirm that Article 36(2) of Commission Regulation (EC) No 889/2008¹ can apply also in the case of land under greenhouses. Therefore, the competent authorities may decide to recognise retroactively as being part of the conversion period any previous period where the agricultural area under greenhouses was not treated with products not authorised for organic production as laid down in Article 36(2)(b).

I would like to stress that the second subparagraph of Article 36(2)(b) of Regulation (EC) No 889/2008 establishes that retroactive recognition can be granted only where **satisfactory proof** has been furnished to the competent authority allowing it to satisfy itself that the parcels were not treated with products not authorised for organic production for a period of at least three years.

It is therefore for the relevant competent authority to assess on a case by case basis whether sufficient guarantees and evidences are provided. Such an assessment is not for EGTOP to provide.

¹ Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ L 250, 18.9.2008, p. 1–84).

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On your second question, the production of herbs and ornamentals in pots for final consumers is a limited derogation from the basic requirement of soil-related crop cultivation laid down under point 1.1. of Part I of Annex II to Regulation (EU) 2018/848², and all other plant production rules shall apply.

Moreover, as you express your concern on possible use of practices not in line with objectives and principles of organic production, I believe that with respect to use of vertical system, a clear limitation can already be deduced by the provisions of Regulation (EU) 2018/848.

To address your question, I would indeed recall one of the general principles laid down under Article 5 (f) : *“the appropriate design and management of biological processes, based on ecological systems and using natural resources which are internal to the management system, using methods that ...practice soil-related crop cultivation and land-related livestock production”*, principle which is reflected in above-mentioned requirement of point 1.1. of part I of Annex II to Regulation (EU) 2018/848.

Since the very beginning of the organic scheme, organic plant production is based on nourishing the plants primarily through the soil ecosystem, plants should be produced on and in living soil in connection with the subsoil and bedrock. Consequently, under Article 4 of Regulation (EC) No 889/2008, hydroponic production was prohibited in organics. For the future, a similar prohibition is laid down in point 1.2 of part I of Annex II to Regulation (EU) 2018/848: “Hydroponic production, which is a method of growing plants which do not naturally grow in water with their roots in a nutrient solution only or in an inert medium to which a nutrient solution is added, is prohibited.”

In addition to this, during the revision of the organic rules, the co-legislators agree upon very few exceptions to this fundamental rule and identify the following limited exceptions to soil-related cultivation which are laid down under Part I of Annex II to Regulation (EU) 2018/848 :

- point 1.3. for the production of sprouted seeds or chicory heads for their particular production techniques implying a phase hors-soil for safety and peculiar technical purpose,
- point 1.4. for the production of ornamentals and herbs that are sold in pots to the consumers for which the principle of soil-related crop cultivation is not adapted or for which no risk exists that the consumer could be misled regarding the production method,
- point 1.4. for growing seedlings or transplants in containers for further transplanting in order to facilitate availability of healthy young plant reproductive material,
- point 1.5. after for a transitional period up to 31 December 2031 for growing crops in demarcated beds in Finland, Sweden and Denmark but limited to the surfaces already certified before 28 June 2017.

² [Regulation \(EU\) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation \(EC\) No 834/2007 \(OJ L 150, 14.6.2018 p.1 \)](#)

To note that the referred exceptions relate only to the requirement in point 1.1. concerning the cultivation in living soil in connection with the subsoil and bedrock. Therefore, all other organic rules laid down in the regulation apply, including the prohibition of hydroponic production. From the detailed provisions above-mentioned, it is clear that it would not be possible to allow vertical farming with hydroponic system in organic, and in case of use of substrates only when applied under the set exceptions.

At this stage, in view of the priorities to finish the secondary legislation related to controls and trade, Commission services do not intend to propose laying down further specific rules for these types of cultivation already subject to a very limited derogation regime.

The present opinion is provided on the basis of the facts as set out in your e-mail of 22 December 2020 and expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Yours sincerely,

